SINGLE BENCH

(3)

-1-

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 1569 / 2005

Petitioner / Plaintiff

Bodhan Barik S/o Shri Biharilal Barik
Aged About 48 Years
R/o B-78, Gayatri Nagar, Raipur,
Teh. & Distt. Raipur (C.G.)

P.R. No. 1573/05
Presented by Shri Rajesh Sharma
dated 12.04.05

VERSUS

Respondent / Defendant

Aarti Buildcon Pvt. Ltd.,
Through, Director – Suresh Atlani
S/o Shri Golaram Atlani,
Ashoka Towers, Shanker Nagar, Raipur,
Teh. & Distt. Raipur (C.G.)

Assailing *Order Dated 7/04/2005 Passed By The Court Of I Additional District Judge,Raipur, In Misc. Civil Appeal No. 12/2005 Arising Out Of Order Dated 15/03/05 Passed By The Court Of I Addl. Civil Judge To The Court Of I Civil Judge – Class-1, Raipur In CS No. 9A /05.*

PETITION UNDER ART 227 OF THE CONSTITUTION

That the petition of the petitioner respectfully showeth as follows-

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आदेश पत्रक

मामला क्रमांक WP.1569/05 **सन्** **200**

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	20.7.2005 Shri Raja Sharma, counsel for the petitioner. Shri P. Diwakar, Sr. Counsel with Shri A. Mazumdar, Counsel for the respondent. The petitioner has preferred this petition under Article 227 of the Constitution of India questioning the legality and correctness of order dated 7.4.2005 passed by learned 1st Additional District Judge, Raipur in M.C.A. No.12/2005 thereby reversing the order dated 15.3.2005 passed by learned Civil Judge Class-I, Raipur in Civil Suit No.9A/2005 whereby learned Civil Judge had allowed the application of petitioner herein filed under Order 39 Rules 1 & 2 of the CPC and granted temporary injunction in favour of the petitioner by directing the defendant/respondent herein not to interfere with the possession of petitioner directly or indirectly till the disposal of suit. I have heard learned counsel for the parties. Learned counsel for the petitioner placing reliance on the judgment of Supreme Court in the matter of **Sree Jain Swetambar Terapanthi Vid (S) Vs. Phundan Singh** reported in **AIR 1999 SC 2324** argued that the appellate court was not entitled to interfere with the order of trial court passed after satisfying that the prima-facie case of the petitioner was made out on merits unless the appellate court reaches to the conclusion that the trial court has gone wrong in recording the prima-facie satisfaction and setting aside that finding on the basis of the material on record because it has not considered the relevant material or because it has erroneously reached the finding or conclusions on the facts established. He	

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आदेश पत्रक

मामला क्रमांक ....1567/05.... **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

further argued that original owner of land in question bearing Khasra Nos.1097/1, 1098/1, 1099/1 & 1321/1 was Late Ketki Bai, who was the mother of Mansaram and after her death the petitioner had purchased the land bearing Khasra Nos.1097/5, 1098/5, 1099/5 & 1321/5 area 0.097 hectares through a registered sale deed on 6.9.2000 from Mansaram and since then he is in possession of that land, therefore, the respondent is not entitled to interfere with the possession of the petitioner. He further argued that the finding of the appellate court is perverse, for the reason that the appellate court has set aside the finding of trial court without examining the material on record and contrary to the settled principles of law.

On the other hand learned counsel for the respondent argued that the land bearing Khasra Nos.1097/11098/1, 1099/1 & 1321/1 belonging to Ketki Bai-mother of Mansaram was acquired by the Acquisition Officer for Karamchari Greh Nirman Samiti and compensation of the same amounting Rs.38,186/- was paid to said Ketki Bai. Thereafter, on 3.9.1998 that Samiti sold that land to Guruhari Nirman Society and on 27.5.2000 Guruhari Nirman Society sold some portion of land admeasuring 0.198 hecatre to Pramil Greh Nirman Samiti, out of this particular land Mansaram sold the land to petitioner herein and the remaining land was sold to one Farukh Khan, who sold the land to Shanti Fintech Ltd. and ultimately the respondent purchased these two groups of land from Shanti Fintech and Pramila Greh Nirmaan Samiti and he is in possession.

Whereas, the petitioner is claiming that he is in possession of the land, which was sold to him by Mansaram. There is another

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मामला क्रमांक ...1569/05..... **सन्** **200**

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

dispute with regard to the mutation of name in revenue records, the petitioner is claiming that on the basis of purchase made by him from Mansaram his name has been mutated in the revenue records, whereas, the respondent is claiming that names of respective purchasers from time to time have also been mutated in the revenue records and they were in possession.

Learned Trial Court as well as First Appellate Court without ascertaining the actual position from the record and without going into the legal aspect of the case regarding possession of the parties passed the impugned orders. Even the application for appointment of the Commissioner was moved on behalf of the petitioner herein but the same was rejected by the trial court. Looking to the facts and circumstances & counter claims made by the parties, in order to decide the application filed by the petitioner for grant of temporary injunction the trial ought to have appointed the Tehsildar (Revenue) of the area as Commissioner and directed him to submit his factual report existing as on date on the site as well as about the contradictory claims made by the parties. Therefore, in the above circumstances, it is not appropriate to decide the matter on merits and the orders passed by the courts below are liable to be set aside.

In the result, the petition is allowed, order dated 7.4.2005 passed by the learned Additional District Judge, Raipur & order dated 15.3.2005 passed by learned Civil Judge Class-I, Raipur are hereby set aside and the matter is remanded back to the Civil Judge to decide the application afresh in accordance with law after considering the rival claims made by the parties, above documents

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आदेश पत्रक

मामला क्रमांक .....1567/05... **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —५—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

and also the factual & legal position. In order to ascertain the factual position learned Civil Judge shall appoint the Tehsildar (Revenue) of the area concerned as Commissioner, to which learned counsel for the parties herein has no objection and direct the Tehsildar to inspect the site in presence of both the parties and submit his report regarding actual position i.e. possession on the site as well as to report about the factual position based on the various sale deeds executed by the parties and other acquisition proceedings. Till then the parties are directed to maintain status quo.

At this stage learned counsel for the petitioner submits that after reversal of order dated 15.3.2005 by the appellate court, the respondent herein has encroached upon his land and raised certain construction.

For this the petitioner has to make a prayer before the trial court and to amend the suit accordingly, however, till the application is decided after all this exercise and the petitioner makes the prayer before the trial court, the respondent is directed to maintain status quo with regard to the construction work also. The Civil Judge is directed to decide the application after completing the above exercise within a period of one month from the date of receipt of copy of this order.

With the observation and directions aforesaid, the petition is disposed of.

All the pending applications are also stand disposed of.

Certified copy as per rules.

Sd/-
L.C. Bhadoo
Judge

Rochan/- 26.7.05 23.7.05